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C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 002695

SIPDIS

LONDON AND PARIS FOR AFRICA WATCHERS

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SUBJECT: KENYAN DEPUTY PARLIAMENT SPEAKER ON ARTICLE 98:

FEELING UNAPPRECIATED

REF: A) NAIROBI 1654 B) NAIROBI 2446 C) NAIROBI 2571

Classified By: ACTING POL/C LISA PETERSON, REASONS 1.4 (B) AND (D)

**¶11. (C) SUMMARY.** Deputy Speaker of Parliament, David Musila, explained June 29 that the underlying reason for Kenyan opposition to an Article 98 agreement is that Kenya feels "unappreciated." In recognition for all the security assistance Kenya has provided to the U.S., Kenya should not be required to sign an Article 98 agreement and should receive a presidential exemption from ASPA and Nethercutt sanctions. Musila also said that a Parliamentary motion urging Kenya not to sign the agreement would almost certainly pass. He agreed, however, that including the word "censure" in the motion was inappropriate and strongly urged that the Embassy ask the Foreign Ministry to have the motion amended accordingly. END SUMMARY.

**¶12. (C)** Poloffs met June 29 with David Musila, who is both Deputy Speaker of Parliament and Chairman of the Liberal Democratic Party, to discuss Parliament's recent engagement on the Article 98 issue. On simmer for much of the last two years, the Article 98 opposition campaign was placed on the front burner after Kenya ratified the Rome Treaty on the International Criminal Court March 15. At first, the opposition consisted of articles and opinion pieces by human rights activists led and orchestrated by the Kenya National Commission on Human Rights (ref A). Parliamentary engagement in the issue began with an anti-Article 98 opinion piece by Musila, which first appeared in The Daily Nation May 16, then again, with only slight modifications, in The Standard June 17 (ref B). It gained impetus on June 17 when MP Paul Muite filed a motion in Parliament to "censure" the U.S. for withdrawing its signature from the Rome Treaty on the International Criminal Court and recommending that the Kenyan Government not succumb to U.S. pressure to sign an Article 98 agreement (ref C).

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WHY SUCH STRONG OPPOSITION?  
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**¶13. (C)** Musila explained that the principal reason for opposition to an Article 98 agreement was that Kenya felt "unappreciated" by the U.S. Kenya had been a strong ally of the U.S. since independence. Kenya has cooperated with the U.S. on the Gulf War, counter-terrorism, joint U.S.-Kenyan military exercises, regional initiatives -- some unpopular -- in Somalia and Sudan, and the 1976 Entebbe rescue mission. (COMMENT: Entebbe was an Israeli mission, but, in Musila's mind or memory, it at least had U.S. fingerprints. END COMMENT.) In return for this cooperation, Kenya should, according to Musila, receive a waiver of the Article 98 requirement. Why have Egypt, all EU countries, and some "more difficult" U.S. partners received a waiver while Kenya, with its many "sacrifices" in the name of cooperation with the U.S., has not?

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THE MUITE MOTION  
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**¶14. (C)** Musila said that the Muite motion had been filed and accepted by the Speaker of Parliament, but had not yet been scheduled for debate. Musila confirmed that Parliament had no official role in approving international agreements and that the motion would not be binding on the Government. He predicted, however, that Parliament would approve the motion.

**¶15. (C)** Poloff told Musila that, while we would not like to see the motion go forward at all, at the very least, the U.S. Government and the U.S. Congress would not take kindly to a motion of "censure." Musila agreed that any reference to "censure" in the motion would not be appropriate. He explained that the Ministry of Foreign Affairs would be asked to comment on the motion on behalf of the Government. Musila strongly recommended that we approach the Minister -- Chirau Ali Mwakwere -- to ask if he could get the motion amended to remove any such reference.

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COMMENT  
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16. (C) Musila's opinion that opposition to Article 98 is the reaction of an aggrieved friend is partially correct. However, the influence of other countries, including erstwhile U.S. allies, is also important. Musila wrote his opinion pieces as the group leader, Kenya chapter, of Parliamentarians for Global Action (PGA), an organization of some 1300 elected members of 110 parliaments, including Canada and European Union countries. PGA has taken a leading role in the establishment and promotion of the ICC and in opposition to bilateral non-surrender agreements. The PGA has already had a hand in the decision by such countries as Ecuador, Uruguay, and Peru to reject an Article 98 agreement and is likely, as an organization or through its members, to be influencing the Kenyan opposition.

17. (C) Post is not inclined to approach Minister Mwakwere on the Muite motion. As such an approach would almost certainly be leaked, it would be spun by the opposition as just another example of U.S. "arm-twisting," or worse, attempting to influence an act of Parliament. We will, however, continue our regular contacts with the Ministry to attempt to push ahead with an agreement. END COMMENT.

BELLAMY